

REMARKS

The Office Action of July 12, 2004, has been carefully considered.

Claims 1 to 12 have been provisionally rejected under the judicially created doctrine of obviousness type double patenting over Claims 1 to 29 of co-pending application Serial No. 10/220,296.

Claims 1 to 12 have now been cancelled. The new main independent claim is Claim 19, which is of the scope of original Claim 13, and thus outside of the present rejection. In addition, original Claim 3 is now an independent Claim 29, which also incorporates the recitation of Claim 13, and is also outside of this rejection.

Withdrawal of this provisional, obviousness-type double patenting rejection is requested.

Claims 2, 4, 9, 16 and 17 have been rejected under 35 USC 112, second paragraph, as being indefinite in the recitation of broad and narrow ranges in the same claim. The claims have now been entirely rewritten to avoid this objection.

Claim 17 has also been objected to on the basis that there is insufficient antecedent basis for the term "polymer." Claim 17 corresponds to new Claims 26 and 27, in which the polymer is defined, thus avoiding this objection.

Withdrawal of this rejection is requested.

Claims 1 through 4 and 7 through 12 have been rejected under 35 USC 102(b) as anticipated by Lahanas et al. In view of the amendment of claims, in particular the combination of Claims 1 and 13, there is no longer a claim of scope corresponding to the rejected claims, and withdrawal of this rejection is requested.

Claims 1 through 3, 6 through 13 and 16 through 18 have been rejected under 35 USC 102(b) as anticipated by Briggs et

al.

The Office Action alleges that Briggs et al teaches multiple cosmetic emulsions containing an oily outer phase and two or more aqueous inner phases, where one of these inner phases can be in the form of a gel, and makes particular reference to Examples III and IV. In Example III, trihydroxystearin (a lipophilic "oleogel", as explained on page 15, paragraph 2), is present as the sole compound of component F. In Example IV, component L is a mixture of propylene glycol and xanthan gum, the latter being a "hydrophilic gelling agent" (as explained on page 15, paragraph 1).

Present claims 19 and 29 recite a *three-phase* emulsion consisting essentially of an emulsifier, one oily outer phase and *two aqueous inner phases*, one of the aqueous inner phases being a gel.

Briggs et al explains the method of preparing the emulsions on page 21 to page 22, as follows:

a) Initially, an oily phase is formed containing a combination of components A+B+C+D+E+F, which are all either oils (the majority of which by weight are silicone oils), waxes, fatty acids, inorganic solids that may be dispersed in liquid oils (in particular, these inorganic solids are silica and pigments such as titanium dioxide and iron oxides), or (for component F) a lipophilic gelling agent. This lipid dispersion may also contain a component G (although not for the most relevant examples III and IV), where G contains the lipid-soluble flavouring agent ethylene brassylate and the lipid-soluble fat preservative BHT).

b) An aqueous phase H is then prepared by "first dissolving the polyvinylpyrrolidone (PVP) complexing agent in alcoholic solvents and then dissolving the anti-acne active followed by the remaining components, ending with adding a

solution of citric acid of salt" (page 22, second paragraph). Phase I (containing water and salt) is then added to phase H, and the (I+H) mixture is added to the combined oil phase A+B+C+D+E+F(+G). At this point, there is clearly a single water-containing phase (which must also contain alcohol and the anti-acne active) and one oil phase.

c) Phase J, containing water, salts, and also PVP is then added to the mixture of the single water-containing phase and single oil phase. Since PVP is presented in Briggs et al (page 6, second paragraph) as specifically acting "as an interfacial film former for preventing coalescence of the aqueous phases", it is to be expected that aqueous phase J will not coalesce with the first aqueous phase (I+H) mixed with the oil phase. It can therefore be concluded that the system of Briggs et al contains, at this point, one oil phase and two aqueous phases, *neither of which is an aqueous gel*.

d) Finally, components K, L, M and N are then "added as diluent." In the case of Examples III and IV, component K is absent. Component L is a mixture of propylene glycol and xanthan gum (a hydrophilic gelling agent) in Example IV, and components M (Example III) and N (Example IV) are *lipophilic* plant extracts.

It is not clear what the final structure of the compositions of Briggs et al will be, in particular how many aqueous phases will be present, and indeed the document is silent throughout concerning the actual number of aqueous phases. While it is possible that the xanthan gum added in step (d) combines with both aqueous phases present at the end of step c), Applicants submit that it is more likely that the xanthan gum mixture forms a new, third inner phase, given that the emulsion contains a coalescence inhibitor, intended to prevent coalescence of the aqueous phases. While Phase L does

not contain water, it is hydrophilic, and would be expected to remain distinct in the oleophilic outer phase.

In any event, given that the xanthan gum is mixed with propylene glycol and not with water, it does not seem that this mixture may fairly be described as an "aqueous gel," this term normally referring to a structured polymer swollen with water (and not an alcohol) as solvent. It may be noted that on page 22, Briggs et al add that "[F]inally phases K, L, M and N are added as diluent." The fact that the word "diluent" is used *further implies that this latter mixture is a low-to-moderate viscosity fluid, not a gel.*

Furthermore, it is well-known that the polymer PVP, which is used in the compositions of Briggs et al, being neither a cross-linked polymer nor a polyelectrolyte (with multiple charged side-chains), cannot give rise to a structural three-dimensional network, the swelling of which by incorporation of a solvent gives rise to a gel.

It thus can in no way be asserted that Briggs et al provides a description of three-phase emulsion (i.e. not a four-phase or even more complex emulsion) in which one of the two aqueous phases (and not both of them) is a gel.

Furthermore, both claims 19 and 29 require the presence of an *emulsifier*, and while Briggs et al does mention emulsifiers on page 16, there is no example of their use (specifically, no emulsifier is present in Examples III and IV). Instead, Briggs et al use coalescence inhibitors (specifically, electrolytes such as sodium chloride), which stabilize emulsions formed not using amphiphilic surfactants, but instead agents such as wax.

It furthermore noted that the use of anionic surfactants appears to be excluded by Briggs et al, in view of the comments on page 1, second paragraph, due to the delipidizing

nature of surfactants.

Consequently, Briggs et al does not disclose any *three-phase* emulsion having a single oily outer phase, and two aqueous inner phases, one of which is a gel.

Therefore, the invention as claimed is clearly different from the disclosure of Briggs et al, and withdrawal of this rejection is requested.

Claims 5 and 6 have been rejected under 35 USC 103(a) over Lahanas et al.

In view of the amendment of claims, there are no claims in this application of the scope of Claims 5 and 6 and withdrawal of this rejection is requested.

Claims 4 and 5 have been rejected under 35 USC 103(a) over Briggs et al. In view of the amendment of claims, there are no claims in this application of the scope of Claims 4 and 5, and withdrawal of this rejection is requested.

Claim 13 and 16 through 18 have been rejected under 35 USC 103(a) over Lahanas et al in view of Briggs et al.

The Lahanas et al reference discloses a multi-phase composition based on a water and silicone emulsion. The emulsion further contains an aqueous gel and a liquid crystal phase dispersed therein. Moreover, the aqueous gel itself contains a perfluorinated oil phase dispersed therein.

Thus, Lahanas et al does not disclose the composition of the invention, since it does not disclose a three phase emulsion consisting essentially of an emulsifier, one oily outer phase and two aqueous inner phases, one of the inner phases being a gel. To the contrary, Lahanas et al specifically discloses five separate phases, silicone, water, liquid crystal, aqueous gel and perfluorinated oil. Thus, even if one were to prepare an anti-acne composition according to Briggs et al utilizing the multi-phase composition of

Lahanas et al, one would not arrive at the claimed invention, and withdrawal of this rejection is requested.

Claims 14 and 15 have been rejected under 35 USC 103 over Briggs et al in view of either Ansmann et al or Milius et al, or Lahanas et al in view of Briggs et al and further in view of either Ansmann et al or Milius et al.

Lahanas et al and Briggs et al have been discussed in detail above, and Applicants rely on those discussions.

Ansmann et al and Milius et al have been cited to show the use of specific emulsifiers. While Ansmann et al and Millus et al do generally teach such emulsifiers, Briggs et al generally teaches against the use of emulsifiers, and specifically teaches against anionic emulsifiers based upon delipidization. In fact, the relevant examples of Briggs et al do not use an emulsifier.

Moreover, none of the references discloses a three-phase emulsion as presently claimed.

Thus, the combination of references cited in the Office action does not actually arrive at the claimed invention, and withdrawal of this rejection is requested.

In view of the foregoing amendments and remarks, Applicants submit that the present application is now in condition for allowance. An early allowance of the application with amended claims is earnestly solicited.

Respectfully submitted,



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